

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5766 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
ANILBHAI KANTIBHAI PARMAR

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MR ANIL S DAVE for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondents nos.1, 2 and 3.

1. The detention order dated 25-1-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under

Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention, supplied to the petitioner under Section 9(1) of "PASA" copy of which is produced at Annexure "C" inter alia indicate that a Prohibition Case was registered against the petitioner on 24-1-1999 at Nashabandi Police Station (East) and countrymade liquor was seized from the possession of the petitioner. The grounds further indicate that three witnesses on assurance of anonymity have supplied information against the antisocial activity of the petitioner vide their statement recorded on 24-1-1999 in respect to incidents which were alleged to have taken place on 27-12-1998, 2-1-1999 and 5-1-1999 respectively.

3. That in consideration of the above stated material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that on 25-1-1999 when the impugned order was passed, the petitioner was in judicial custody and yet the detaining authority has passed the impugned order without considering the less drastic remedy of opposing and cancellation of bail though available which has vitiated the subjective satisfaction rendering the impugned order invalid.

5. That in the matter of ZUBEDABIBI RASIDKAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law.

6. On scrutiny of facts apparent from the grounds of detention, it appears that the respondent no.1 has observed in the penultimate paragraph to the effect that though the petitioner is in judicial custody it is likely

that the petitioner might apply for bail at any time and get himself released on bail and thereafter he might continue his nefarious antisocial activity. The said observation suggests that the detaining authority has passed the impugned order on apprehension rather than material and that too without considering the aspect of less drastic remedy of opposing and cancellation of bail though available under Section 437(5) of the Criminal Procedure Code, and as such, the subjective satisfaction having been vitiated, the impugned order is bad in law.

7. In the instant case also, the detaining authority while considering the availability of alternative remedy has failed to consider the aspect of less drastic remedy of opposing and cancellation of bail granted to the petitioner in a case pending investigation which discloses the non application of mind on the part of the detaining authority. Thus, the subjective satisfaction arrived at by the detaining authority having been vitiated the impugned order is invalid.

8. As the petition succeeds on the aforesaid stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. In the result, the petition is allowed. The impugned order of detention dated 25-1-1999 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Anilbhai Kantilal Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

\*\*\*\*\*

stanley-akt.